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No. 06-454

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In The
Supreme Court of the United States

WILLIAM F. HEGGER,

Petitioner,

v.

VISTEON AUTOMOTIVE SYSTEMS, INC., and FORD MOTOR CO.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Sixth Circuit erred in affirming the district court's taxation of $3,842.70 in court costs against the petitioner, notwithstanding the petitioner's contention that the court of appeals failed to consider the comparative financial resources of the parties, when: (1) the petitioner's claims against the respondents were resolved adversely to the petitioner through a summary judgment that was affirmed on appeal; (2) the petitioner failed to argue, in either the district court or the court of appeals, that the comparative financial resources of the parties warranted a departure from the general rule that costs should presumptively be taxed against the nonprevailing party; (3) the petitioner presented no evidence that he suffered from limited financial resources or was unable to pay the costs in question; and (4) the petitioner has otherwise provided no basis for concluding that the court of appeals erred in failing to find an abuse of discretion in the district court's taxation of costs.

INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

The caption sets forth all of the parties to this case, except that two other entities were defendants (along with the respondents) in the district court: United Auto Workers International and United Auto Workers Local 737. Those entities were not named as appellees when the petitioner appealed to the United States Court of Appeals for the Sixth Circuit.

The corporate respondents have no parent companies. Moreover, no publicly held company owns ten percent or more of either respondent's stock.

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JURISDICTION

The district court had original jurisdiction over this case pursuant to 28 U.S.C. § 1331 because the petitioner, William F. Hegger ("Hegger"), asserted claims against the respondents, defendants in the trial court, pursuant to various federal statutes. R:1; *see* APP:6a.[1] The district court entered summary judgment against Hegger and in favor of the respondents. R:52; APP:16a-19a. The United States Court of Appeals for the Sixth Circuit affirmed that decision. APP:5a-14a. In Case No. 06-299, now pending in this Court, Hegger is requesting that this Court grant certiorari to review that decision.

In the meantime, following the clerk of the district court's taxation of costs against him in the amount of $3,842.70 (R:67, 70; APX:38, 42), Hegger filed a series of motions objecting to those costs. R:69, 71, 73; APX:40-41, 43-44, 46-47. The district court denied the last of those motions through an order entered on September 7, 2005. R:74; APX:48; APP:15a. Hegger filed a notice of appeal on September 26, 2005. R:75; APX:49. Hegger's notice of appeal was timely under rule 4 of the Federal Rules of Appellate Procedure, and the court of appeals had jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

The Sixth Circuit's decision affirming the district court's award of costs to the respondents was issued on June 30, 2006. APP:1a-4a. Hegger filed no post-decision

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[1] The record on appeal is cited both as "R:__," according to docket number, and, when possible, as "APX:__," according to page number of the joint appendix that the parties filed with the Sixth Circuit. Hegger's petition is cited as "P:__," according to page number. The appendix to Hegger's petition, setting forth relevant decisions of the court of appeals and the district court, is cited as "APP:__," according to page number.

motions. He filed his petition for certiorari with this Court on September 25, 2006. The petition was timely under rule 13.1 of this Court's rules. Hegger states that this Court's "jurisdiction over the instant controversy" arises under 28 U.S.C. § 1252. P:1. He is mistaken. That statute was repealed in 1988. *See* Pub. L. 100-352, § 1. This Court's jurisdiction actually exists pursuant to 28 U.S.C. § 1254(1).

The respondents agree with Hegger that rule 12.5 of this Court's rules is not applicable to his petition. P:1. The reason for that rule's inapplicability, however, is not, as Hegger says, because his petition is allegedly "predicated on errors made by the United States Court of Appeals for the Sixth Circuit." P:1. Instead, the reason rule 12.5 does not apply to Hegger's petition is simply because he is not a cross-petitioning respondent.

Similarly, although the respondents concur with Hegger that neither rule 29.4(b) nor (c) applies here, the reason is not, as Hegger states, because "neither the United States nor any department thereof is a party to these proceeding." P:1. Rather, the reason that rule 29.4(b) or (c) is inapplicable here is because this case does not draw into question the constitutionality of any federal or state statute.

STATEMENT OF THE CASE

This is a case involving alleged employment discrimination, in which Hegger, the employee, sued the respondents, his employers. *See* APP:6a. On January 3, 2005, the district court granted summary judgment to the respondents on the merits of Hegger's claims. R:52; APP:16a-19a.

Hegger unsuccessfully appealed that decision to the court of appeals. APP:5a-14a. His certiorari petition in which he is seeking review of that decision is now pending before this Court in Case No. 06-299.

Meanwhile, following the summary judgment in their favor, the respondents filed with the district court a bill of costs for $4,212.70. R:55; APX:13; *see* 2a. A few days later, the clerk of the district court entered a notice of refusal to consider the bill because it omitted a date and time certain for presentation to the clerk, as required by a local rule of the district court. R:58; APX:27; *see* APP:2a. The respondents then filed a motion with the district court for review of the clerk's denial of costs. R:59; APX:28; *see* APP:2a. The district court granted that motion, finding that the deficiency in the bill had been cured. R:63; APX:32; *see* APP:2a. In accordance with that order, the clerk taxed costs against Hegger in the amount of $3,842.70. R:67, 70; APX:38, 42; *see* APP:2a.

Hegger filed a series of motions objecting to the costs that had been taxed against him. R:69, 71, 73; APX:40-41, 43-44, 46-47; *see* 2a. The district court overruled all of Hegger's objections and approved the costs awarded to the respondents. R:72, 74; APX:45, 48; *see* APP:2a, 15a. Hegger appealed. R:75; APX:49.

On appeal, Hegger's sole argument was "that his due process rights were violated when the defendants were awarded costs as the bill was submitted as incomplete under the district court's local rules and the bill was not corrected until after time to do so had run." APP:3a. Applying the abuse-of-discretion standard of review, the court of appeals rejected Hegger's argument, noting that an abuse of discretion is presented only when an appellate

court "reaches a firm and definite conviction that the trial court committed a clear error in judgment." APP:3a.

The court of appeals noted the language of rule 54(d)(1) of the Federal Rules of Civil Procedure, which presumptively entitles a prevailing party to the recovery of costs. APP:3a. The court then disposed of Hegger's due process argument as follows:

> Hegger asserts that because the defendants made a clerical error in their bill of costs by omitting a date and time certain as required by a local court rule, his due process rights were violated. No such requirement exists in Rule 54(d)(1). Hegger was notified of the demand which the defendants documented. The defendants' clerical error did not violate Hegger's due process rights or Rule 54(d)(1). As Rule 54(d)(1) entitles the defendants to their costs and Hegger is liable for those costs, the district court's decision to grant defendants costs was not an abuse of discretion.

APP:3a. The decision of the court of appeals issued on June 30, 2006. APP:1a. Hegger did not seek any sort of post-decision relief from the court of appeals.

ARGUMENTS FOR DENYING THE PETITION

Hegger's sole argument is that the taxation of costs against him was an abuse of discretion due to his alleged limited financial resources and the comparative financial disparity between him and the respondents. P:4. According to him, the court of appeals erred because it "made not the slightest effort to compare or contrast" the respective financial resources of the parties. P:4. Hegger's argument

is completely without merit, and he has provided this Court with no basis for granting certiorari.

It is quite true that the court of appeals did not consider the disparity-of-financial-resources argument that Hegger is now making. It failed to do so for the most basic of reasons: Hegger did not make that argument – either in the court of appeals or in the district court. He is making that argument for the first time in the certiorari petition that he has filed with this Court. That factor alone is a sufficient ground for denying Hegger's petition. *See National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999) (Court does not decide issues in the first instance issues not decided below); *United States v. Ortiz*, 422 U.S. 891, 898 (1975) (Court declined to consider issue raised for first time in petition for certiorari).

Nor did Hegger provide either the district court or the court of appeals with any evidence to support his conclusory suggestion that he is unable to pay the rather minimal costs that were taxed against him. Without such evidence of record, the court of appeals would have had no basis for relieving Hegger of the duty to pay costs, even if he had made an argument predicated on his purported financial condition.

Rule 54(d)(1) of the Federal Rules of Civil Procedure provides that "[e]xcept when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). As this Court has recognized, and as even Hegger acknowledges (P:3), the district court was entrusted with broad discretion in determining the issues concerning the taxation of costs. *See Crawford*

Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987).

Hegger did not demonstrate to the court of appeals that the district court abused its discretion in taxing costs against him. Indeed, it would have been quite unusual if the district court had not done so.

To be sure, "Rule 54(d) generally grants a federal court discretion to refuse to tax costs in favor of the prevailing party." *Id.* at 442. But that rule "provides that the cost *shall* be taxed against the losing party unless the court otherwise directs." *Id.* at 441. When a district court departs from the general rule and declines to award costs to a prevailing party, the courts of appeals have consistently required the district courts to have an evidentiary basis for doing so and to state their reasons for that departure, so that the courts of appeals can determine whether the district courts acted within their discretion. *See, e.g.*, *Whitfield v. Scully*, 241 F.3d 264, 270 (2d Cir. 2001); *Cantrell v. International Broth. Of Elec. Workers, AFL-CIO, Local 2021*, 69 F.3d 456, 458-59 (10th Cir. 1995); *Delano v. Kitch*, 663 F.2d 990, 1001 (10th Cir. 1981); *Serna v. Manzano*, 616 F.2d 1165, 1167-68 (10th Cir. 1980); *Constantino v. American S/T Achilles*, 580 F.2d 121, 123 (4th Cir. 1978); *Compania Pelineon De Navegacion, S.A. v. Texas Petroleum Co.*, 540 F.2d 53, 56-57 (2d Cir. 1976).

Here, Hegger provided the district court with absolutely no evidentiary basis – or with any other valid reason – for departing from the presumption that costs are to be taxed against the losing party. And he certainly has not demonstrated that the court of appeals erred in affirming the district court's taxation of those costs – particularly when the argument that Hegger is now making was never pursued before either that court or the district

court.[2] Moreover, Hegger has not given any reason whatsoever why the decision by the court of appeals, even if it were wrong, would be worthy of this Court's certiorari review. *See* S. Ct. R. 10.

What happened here was a typical, standard taxation of costs after a plaintiff lost on the merits. There was no genuine appellate issue for the Sixth Circuit to consider, and there is most definitely no "certworthy" issue for this Court to review either.

CONCLUSION

For the foregoing reasons, the respondents respectfully request that the Court deny Hegger's petition for a writ of certiorari.

Respectfully submitted,

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[2] The respondents take no position on whether the district court would have abused its discretion if it had denied costs to them based upon Hegger's presentation of evidence of the parties' disparate financial resources. Hegger presented no such evidence, he made no such argument, and the district made no decision of that nature. That question is not presented in this case, and Hegger's citation (P:4) to *National Organization for Women v. Bank of California*, 680 F.2d 1291 (9th Cir. 1982), is therefore irrelevant.